

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION

3 UNITED STATES OF AMERICA) Docket No. A 12-CR-210(3) SS
4)
4 vs.) Austin, Texas
5)
5 JOSE TREVINO-MORALES) September 5, 2013

6
7 TRANSCRIPT OF SENTENCING
8 BEFORE THE HONORABLE SAM SPARKS

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25 Proceedings reported by computerized stenography, transcript
produced by computer.

13:59:36 1 THE COURT: Mr. Lechtenberger.

13:59:38 2 MR. LECHTENBERGER: Yes, your Honor.

13:59:39 3 THE COURT: I want to get the record straight because
13:59:41 4 there's a couple of funny things that went on.

13:59:44 5 At one period of time, Mr. Finn and Ms. Williams, or
13:59:53 6 through Mr. Finn's office, forwarded an e-mail of objection or an
13:59:58 7 objection to the probation department and then, orally said that
14:00:03 8 he was not going to file it, and it was not filed; but it was
14:00:14 9 considered by the probation officer because at the time of his
14:00:17 10 original report, that's all he had.

14:00:20 11 And then, I've received from you, which I'm going to
14:00:24 12 hand to the clerk, but it's simply an e-mail from you indicating
14:00:28 13 that those objections, whatever they were, were withdrawn and
14:00:31 14 replaced with the ones that you filed. Is that correct?

14:00:35 15 MR. LECHTENBERGER: Yes, sir. That is.

14:00:36 16 THE COURT: Okay. I just wanted to make sure of that
14:00:38 17 as we proceeded on.

14:00:39 18 MR. LECHTENBERGER: I had coordinated that with your
14:00:42 19 U.S. probation officer, and I understood that was the preferred
14:00:44 20 process by the Court.

14:00:45 21 THE COURT: And it was appropriate.

14:00:47 22 MR. LECHTENBERGER: Yes, sir.

14:00:48 23 THE COURT: It's just I want the record to so reflect.

14:00:52 24 All right. The probation department -- Mr. Trevino,
14:00:57 25 have you gone over with your lawyer the presentence

14:01:00 1 investigation?

14:01:01 2 DEFENDANT TREVINO-MORALES: Yes, sir.

14:01:02 3 THE COURT: The probation department determined under
14:01:12 4 the guidelines a maximum base 43, with a criminal history of I,
14:01:18 5 for a range of way over the statutory maximum of 240 months.

14:01:31 6 I have no objections from the government. I have five
14:01:37 7 objections from the defense. First, that the base should be
14:01:44 8 between one million-seven-plus for a level of 16, which would --
14:01:53 9 when you add the enhancements that are admitted would end up
14:01:57 10 being a 24, and a guideline range of 78 to 97 months, contesting
14:02:16 11 the 20 million-plus guideline. We've heard all of the evidence
14:02:22 12 on that.

14:02:22 13 And then, an objection on 2S1.(1)(b)(1) contesting that
14:02:32 14 Mr. Trevino did not know he was dealing with drug money. I won't
14:02:36 15 even hear arguments on that. I'll overrule that. Sophisticated
14:02:41 16 laundering, I've already overruled. So, counsel, I'd like to
14:02:48 17 hear your argument on base and the role.

14:02:50 18 MR. LECHTENBERGER: Your Honor, probably the best
14:02:51 19 argument I could make is what Agent Pennington said. Having been
14:02:57 20 here and hearing the Court address some of the unnamed
14:03:01 21 codefendants/confidential informants, it seems to me that what
14:03:06 22 Agent Pennington said effective amount, give or take, of \$2
14:03:11 23 million, that dovetails exactly into what I've said in objection
14:03:14 24 number one. I obviously anticipate the government will say that
14:03:16 25 relevant conduct is in play, that we need to consider what other

14:03:20 1 codefendants have said. They may have used the word "conspiracy"
14:03:24 2 with you.

14:03:24 3 But at the end of the argument, Judge, I think the best
14:03:27 4 way to approach this is a hard and fast number, which we have,
14:03:30 5 could either be 1.734 million, which is what I've suggested in
14:03:34 6 one or what Agent Pennington said in redirect by Mr. Gardner of
14:03:40 7 \$2 million.

14:03:44 8 THE COURT: Well, what do I do with the fact that we've
14:03:47 9 got over \$16 million in purchases, over \$8 million, whether
14:03:57 10 conservative or not, in expenses and all the horses end up with
14:04:00 11 Mr. Trevino?

14:04:04 12 MR. LECHTENBERGER: As far as the expenses, if I could
14:04:06 13 go in reverse order, Judge, a lot of those expenses, from what
14:04:09 14 I've read, had to do with horse dentistry, with upkeep, with
14:04:14 15 veterinarian care. I would argue that most of those, if not all
14:04:18 16 of those expenses actually were legitimate in regards to
14:04:23 17 fundamentally maintaining a horse stable in a professional
14:04:26 18 capacity.

14:04:26 19 THE COURT: Well, let's just throw out the idea, then,
14:04:28 20 that we know that the expenses were paid. We know -- I say we.
14:04:34 21 I'm sure you've reviewed the transcript.

14:04:36 22 MR. LECHTENBERGER: Yes, sir.

14:04:37 23 THE COURT: We know how they were paid over the period
14:04:40 24 of time. But on the government's argument, notwithstanding that
14:04:48 25 whatever they're going to argue, it seems to me that it's a whole

14:04:53 1 lot closer to \$20 million than 1.7. And all of the evidence that
14:04:59 2 I heard at trial is that Mr. Trevino ended up with the better
14:05:05 3 horses from scratch, that is, from nothing that he had into a big
14:05:12 4 ranch with all the horses on it.

14:05:17 5 Notwithstanding all of the other arguments that good
14:05:21 6 lawyers have made, those two factors I wanted to give you an
14:05:27 7 opportunity to make your best argument on.

14:05:31 8 MR. LECHTENBERGER: Judge, could I have a moment?

14:05:32 9 THE COURT: Yes, sir.

14:05:50 10 MR. LECHTENBERGER: Your Honor, the best way I can
14:05:52 11 phrase it, I believe that with the evidence that I've read that I
14:06:00 12 understand, not being at trial, but having gone through the
14:06:02 13 transcript, is a lot of the witnesses in my opinion perhaps did
14:06:07 14 not have meritorious testimony, and obviously the twelve folks on
14:06:11 15 the jury saw otherwise. But from a credibility standpoint,
14:06:16 16 what's been brought up by some of the co-counsels here, I don't
14:06:19 17 think lends itself to credibility of necessarily these
14:06:22 18 individuals saying these things.

14:06:23 19 I note that Mr. Trevino -- hopefully was brought out
14:06:27 20 through testimony that Mr. Trevino has been around horses at a
14:06:30 21 young age from five years old. I think one of the character
14:06:34 22 letters did talk about that. So, again, full circle here, Judge,
14:06:38 23 probably the best way I could phrase it is that I don't
14:06:41 24 necessarily think that the \$20 million represents fairly and
14:06:45 25 accurately what his relevant conduct is, notwithstanding what the

14:06:48 1 codefendants have said, or the coconspirators, or the witnesses
14:06:52 2 for the government.

14:06:54 3 THE COURT: I'll hear from the government on the
14:06:56 4 objection.

14:06:57 5 MR. GARDNER: On the amount, your Honor, the Court has
14:07:00 6 heard and seen the exhibits that came into evidence, both the
14:07:04 7 course of trial and here today. And I'm just looking at my
14:07:08 8 notes, majority of the expenses were all for the benefit of the
14:07:11 9 horses maintained by Jose Trevino's ranch, including 3.9 million
14:07:16 10 of his own, 1.2 million, Southwest Stallion Station. I believe
14:07:20 11 the Court heard that most of the horses there were maintained by
14:07:23 12 Jose Trevino. And, also, as the Court is well aware, that over
14:07:27 13 400 horses of this organization's stock were in Mr. Jose
14:07:32 14 Trevino's possession.

14:07:34 15 And finally, I'd like to point out, Judge, I don't
14:07:36 16 think there's any dispute that Jose Trevino is -- being the blood
14:07:38 17 brother of the leader of the entire Zetas organization was the
14:07:41 18 leader on this side of the border managing the horses. I think
14:07:44 19 the fact that, as the Court noted, he gets the most valuable
14:07:47 20 horses transferred into his name, that indicates that he is the
14:07:52 21 director, if you will, for the United States subsidiary of the
14:07:56 22 Zetas money-laundering organization.

14:07:58 23 And, again, I think with the testimony of Special Agent
14:08:01 24 Pennington today, that 25 million is a very conservative number.
14:08:06 25 And as Mr. Lechtenberger points out, we are asking the Court to

14:08:10 1 consider not only as directly attributable to Jose Trevino, the
14:08:14 2 government's opinion is over \$20 million, but as the leader of
14:08:18 3 the organization, 1.3, he should be accountable for all of it.

14:08:24 4 THE COURT: All right. How about role? No, no. He
14:08:31 5 hasn't had the opportunity yet.

14:08:33 6 MR. GARDNER: Oh.

14:08:35 7 THE COURT: Do you wish to argue role?

14:08:39 8 MR. LECHTENBERGER: Judge, I think I'm going to stand
14:08:41 9 with what I've said before to you.

14:08:43 10 THE COURT: All right. Do you have anything else that
14:08:45 11 you want to say on the role?

14:08:47 12 MR. GARDNER: Not with respect to the objections, your
14:08:49 13 Honor.

14:08:51 14 THE COURT: Well, I have no trouble at all from the
14:08:53 15 evidence, particularly in the trial, that the evidence before me
14:08:56 16 that hasn't been ruled out that the appropriate factual finding
14:09:09 17 with regard to the calculated base is easily over 20 million, and
14:09:13 18 I overrule that objection. The objection under 2S1.(1)(b)(1),
14:09:19 19 I've already overruled. Sophisticated laundering objection, I've
14:09:24 20 already ruled.

14:09:26 21 On role, Mr. Trevino obviously exercised leadership
14:09:33 22 over his wife and his daughter, who also have been involved in
14:09:38 23 this lawsuit. His brother and at least, what, 13, 14 employees
14:09:46 24 running the property, keeping the house. I have no trouble
14:09:53 25 finding the role. I'll overrule that objection, which leaves the

14:10:00 1 calculation of the probation officer as it is.

14:10:10 2 Do you know of any legal reason, sir, we shouldn't
14:10:13 3 proceed with sentencing?

14:10:14 4 MR. LECHTENBERGER: No, sir. No legal reason, your
14:10:16 5 Honor.

14:10:16 6 MR. GARDNER: Nor does the government, your Honor.

14:10:17 7 THE COURT: Mr. Trevino, you have the right to say
14:10:19 8 anything that you wish. You do not -- you're not required to say
14:10:23 9 anything, but you have that opportunity and I would offer to you
14:10:27 10 now.

14:10:27 11 DEFENDANT TREVINO-MORALES: Thank you, your Honor.

14:10:28 12 I appreciate your opportunity you give me today. On my
14:10:32 13 behalf, I want to say that I'm very sorry to be in here. I've
14:10:41 14 been embarrassed already. And that I want to say that according
14:10:47 15 to this -- if I might start from this Tempting Dash, the horse
14:10:53 16 that I bought for my wife and myself, and that from there on,
14:10:58 17 anything that I touch includes winning from race tracks to a
14:11:03 18 horse that I sold. It all includes winning \$4.2 million thrown
14:11:10 19 in from September 2009 until to date; and that from there, I make
14:11:18 20 expenses towards taking care of animals, breeding the animals,
14:11:22 21 feeding the animals.

14:11:24 22 And those \$4.2 million, 2.6 were race earnings. And
14:11:32 23 like I said, I'm very sorry. And that it was in the trial that
14:11:39 24 I'm a Zeta. It was proved in trial that I don't have any
14:11:43 25 aggressive conduct to anybody. It was proved at trial that all I

14:11:48 1 did was working. Since all my life, I've been doing like twelve
14:11:53 2 years prior to this 2009, building schools for the state of Texas
14:11:58 3 from elementary all the way to college through different
14:12:01 4 companies. So I was pretty much and still am real proud of that,
14:12:09 5 building for the future of the kids of our country, and I always
14:12:17 6 tell my kids to be proud of that and take advantage of what we
14:12:19 7 built.

14:12:23 8 And that I feel, too, that my defense compromised my
14:12:29 9 defense. The only attorney that I have -- only one contract
14:12:32 10 between Mr. David Finn, who I know that he fails me a lot because
14:12:37 11 out of 53 over witnesses, he only crossed eight. And he kind of
14:12:45 12 believed that his assistant was no part of his legal firm to
14:12:49 13 trial this case for him. When I hired him to do that and he put
14:12:53 14 all responsibility on the assistant and he only -- I mean, I can
14:12:59 15 say that in ten months prior to trial, he only come and visit me
14:13:02 16 ten times, none of them with any discovery at all. None of them
14:13:07 17 with any straight to my defense. I just want to bring it up to
14:13:12 18 your attention, your Honor.

14:13:13 19 Thank you for listening to me. But I think I was
14:13:17 20 misrepresented big time. And that I was in my right to present
14:13:25 21 my witnesses, which we submitted on the 15th of April, and by the
14:13:29 22 18th, I provided funds to Mr. Finn to bring those witnesses to
14:13:36 23 trial. On the April the 30th at 5:55 p.m., your Honor, I asked
14:13:44 24 defense if we're ready for witnesses, and they confirmed that.
14:13:51 25 And at Mr. Gardner request, he said that -- he asked my defense

14:13:56 1 to provide the witness list -- final witness list due to the
14:14:00 2 extensity of witnesses, which I believe they provide to Mr.
14:14:08 3 Gardner.

14:14:08 4 But on May the 1st, they rest, and I was denied my
14:14:14 5 right to testify on the stand and my witnesses -- I authorized
14:14:21 6 Ms. Williams to draw up the witness list. I believe that was
14:14:24 7 about 25 to 30 witness because the witness already the government
14:14:30 8 called, and there were some of them on my list. But I don't
14:14:37 9 understand why they deny my right to present my witness in my
14:14:40 10 defense and my right to testify on my defense, on my behalf. And
14:14:45 11 that I was told that some of my witnesses were going to testify
14:14:54 12 against me, according to Mr. Gardner, which I don't know.

14:14:58 13 And I'm going to try -- I still want you, this court --
14:15:04 14 come to this -- I'm prepared in closing arguments --

14:15:04 15 MR. LECHTENBERGER: Don't tell him --

14:15:08 16 DEFENDANT TREVINO-MORALES: I'm sorry.

14:15:08 17 THE COURT: That's all right, sir.

14:15:11 18 DEFENDANT TREVINO-MORALES: And I think he was right.
14:15:12 19 He didn't come prepared for this trial, Mr. Finn, and I'm sorry
14:15:15 20 about that. I'm very sorry that if any bad behavior from my
14:15:21 21 brothers, I apologize for that, too.

14:15:25 22 THE COURT: Counsel.

14:15:29 23 MR. LECHTENBERGER: Judge, our position has been that
14:15:31 24 Jose Trevino is not Miguel Trevino. Jose Trevino is not Omar
14:15:36 25 Trevino. In fact, even in the PSR, unfortunately, in paragraph

14:15:42 1 111, it even mentions Jose Trevino's older brother Juan Trevino.
14:15:51 2 At the end of the day, I know that during the trial, from what
14:15:55 3 I've read, Jose Trevino was touched each and every moment by the
14:15:59 4 same paintbrush by the government. But I can tell you that my
14:16:06 5 reading and what I know about this man is that he's no Zeta.

14:16:11 6 In fact, your Honor, I believe the opposite is true.
14:16:13 7 And by way of example, I'll give you a couple of points here.
14:16:19 8 What we know from Jose Trevino is that he's law-abiding. He
14:16:25 9 comes to this country in his early 30s, he complies with the law,
14:16:29 10 he becomes a U.S. citizen. And I'm sure that this court has
14:16:32 11 heard many, many illegal immigration cases. That's not the case
14:16:35 12 with Jose.

14:16:35 13 We know that he, like many of us, goes out and gets a
14:16:41 14 gun permit, and he does that through the state of Texas. He does
14:16:43 15 it in a legal proceeding, the way it's supposed to be done. We
14:16:50 16 know that he has no criminal history, and I think that's
14:16:53 17 significant. This court, as you probably do on a weekly basis,
14:16:56 18 if not on a daily basis, you see Criminal History Category V, VI.
14:17:01 19 Not the situation with this man. We know from his letters and I
14:17:05 20 thought the letters were very, very poignant. I thought they
14:17:08 21 were to the point. I thought they even tug at some of the
14:17:13 22 heartstrings. And I thought that the letters were, quite
14:17:16 23 frankly, about as forthright and honest as I've seen in a long
14:17:21 24 time.

14:17:21 25 We know that he's married, he has four children. He's

1 a soccer coach. He goes to high school with his daughter. His
2 family, although they have been ostracized, they're in the back
3 row, they're watching us right now. And I've made the conscious
4 decision not to call any witnesses just for the sake of brevity
5 as well as because I think that my argument holds weight with the
6 Court. But they are here to show their support, notwithstanding
7 the fact that Miguel is incarcerated by the Mexican federales,
8 coming into the U.S. soon. Omar is still on the loose. That's
9 not Jose.

10 We know through the letters that he takes people on
11 fishing trips, that he gives needy families \$300, that he tries
12 to do the right thing each and every day. And if you consider,
13 your Honor, even in the light most favorable to the government at
14 this time got started in 2008, I mean, the man's 46. He's a
15 little younger than myself. So the vast majority of his life,
16 he's been law-abiding. Now, does that excuse his conduct?
17 Absolutely not, and I'm not trying to excuse his conduct. I'm
18 just trying to give the Court a little bit better perspective.

19 I want to close this way, Judge. I want to close this
20 way. I think the true picture of Jose Trevino is what we've seen
21 in the letters and some of the adjectives that I've pointed out
22 and I had to write them down and to read them back to the Court.
23 Humble, honest, trustworthy, hard-working, loyal, caring. I
24 mean, any type of benevolent adjective that you can hear, that's
25 in those letters, and that's the true picture of this man.

14:19:11 1 I anticipate the government will ask you for the
14:19:13 2 maximum. I anticipate Mr. Gardner will give a very eloquent
14:19:17 3 closing and say, give him 240 months, send a message to the
14:19:20 4 United States. Send a message to Omar. Send a message to
14:19:26 5 Miguel. And you very well may do that, your Honor, but I'm going
14:19:30 6 to ask you to take a chance and go against the grain here a
14:19:33 7 little bit.

14:19:33 8 What I put in my sentencing memorandum was to the
14:19:35 9 point, succinct. I'm going to ask you to give him ten years, 120
14:19:40 10 months. Under all the just punishments that I've seen in all my
14:19:45 11 short career being a lawyer, for this man right now, ten will do
14:19:51 12 the trick. That's all I have, Judge.

14:19:54 13 DEFENDANT TREVINO-MORALES: If I might, your Honor,
14:19:57 14 with all respect, here's the letter that I sent to Mr. Finn.

14:20:07 15 MR. LECHTENBERGER: I'll take care of that.

14:20:08 16 DEFENDANT TREVINO-MORALES: Asking for help, begging
14:20:10 17 for help and they're notarized there from Miguel, and he never
14:20:14 18 respond to me.

14:20:19 19 MR. LECHTENBERGER: I'll take care of that.

14:20:21 20 DEFENDANT TREVINO-MORALES: I need my family. Thank
14:20:25 21 you.

14:20:27 22 THE COURT: Mr. Gardner.

14:20:28 23 MR. GARDNER: Mr. Lechtenberger's right. The
14:20:30 24 government is asking for 240 months, not because his guidelines
14:20:33 25 set that but the Court also thinks -- the government also thinks

14:20:36 1 the Court has plenty of grounds under 3553 to grant a 20-year
14:20:40 2 sentence. When Mr. Lechtenberger says I'm painting Mr. Jose
14:20:45 3 Trevino with the same brush, I'll carry that analogy a little
14:20:49 4 farther because they come from the same bucket of paint.

14:20:51 5 The ability of this defendant to take that money,
14:20:55 6 knowing how it was earned and the price of blood in which it's
14:20:59 7 covered with, fully justifies this court imposing a 20-year
14:21:03 8 sentence, the statutory max. So whether it's a guideline
14:21:06 9 sentence or it's a variance, the fact that the source and his
14:21:09 10 relationship to the brothers and the activity that he undertook
14:21:13 11 with that money here in the United States, on behalf of his
14:21:15 12 brothers, fully justifies a 20-year sentence. That's all we
14:21:19 13 have, your Honor.

14:21:20 14 THE COURT: Probation have anything they wish to state?

14:21:22 15 PROBATION OFFICER: No, your Honor.

14:21:23 16 THE COURT: Does anybody else wish to speak at this
14:21:25 17 sentencing?

14:21:26 18 Anything further? Mr. Trevino? Mr. Lechtenberger?

14:21:33 19 MR. LECHTENBERGER: No. I think we've said what we
14:21:35 20 needed to say. Thank you, Judge.

14:21:36 21 THE COURT: Mr. Trevino, nobody in this court has
14:21:40 22 alleged that you are a Zeta. Nobody's charged you with being a
14:21:46 23 Zeta. You're charged with moving money of the Zetas, and there's
14:21:54 24 no question in my mind that that was done. The evidence was
14:22:00 25 pretty overwhelming. I don't think there was -- there were

14:22:07 1 probably non-credible people but little non-credible evidence.
14:22:11 2 Didn't even take the jury a long time to convict those that they
14:22:15 3 convicted.
14:22:17 4 The thing that bothers me the most is, did you have a
14:22:24 5 chance to say no? There are other people in that category that
14:22:33 6 are involved in this lawsuit, and that's one of the things that
14:22:38 7 bothers me the most. But you did have the opportunity to say no.
14:22:43 8 You just didn't. And you ended up involving your own family.
14:22:52 9 And whether you knew about these murders or not, whether you knew
14:23:00 10 about all of the other things that were going on, you were the
14:23:04 11 funnel for most of it, and you ended up with all of the horses,
14:23:08 12 and it's just beyond comprehension that you could do all that on
14:23:14 13 your own, as was the defense that you put forward.
14:23:18 14 And I sentence you to 240 months in the custody of the
14:23:23 15 Bureau of Prisons, followed by a three-year term of supervised
14:23:41 16 release. I place the conditions of supervision in the standing
14:23:46 17 order of this district for all supervision. In addition to that,
14:23:53 18 the following special conditions. First off, I find there's a
14:24:01 19 low risk, if any, of future substance abuse, and I waive
14:24:05 20 mandatory drug testing conditions.
14:24:10 21 You will provide the probation officer access to any
14:24:15 22 requested financial information that the probation officer
14:24:19 23 requests. And you will execute any release to obtain financial
14:24:25 24 information that's requested by the probation officer. You will
14:24:30 25 disclose all assets and liabilities to the probation officer.

14:24:34 1 You will not transfer, sell, give away, or otherwise convey, any
14:24:38 2 asset without first consulting the probation officer.

14:24:43 3 You will submit your person, property, house,
14:24:46 4 residence, vehicle, papers, computers as defined by state and
14:24:51 5 federal law and other electronic communication, or data storage
14:24:55 6 devices, or media to a search conducted by a United States
14:24:59 7 probation officer. Failure to submit to such a search may be
14:25:04 8 grounds for revocation of release. The defendant shall warn any
14:25:08 9 occupant that the premises that the -- that the premises may be
14:25:14 10 searched, the condition -- subject to this condition. Any search
14:25:17 11 must be conducted at a reasonable time and in a reasonable
14:25:22 12 manner. And the probation officer may conduct such a search when
14:25:25 13 he or she has a reasonable suspicion that you may have violated a
14:25:28 14 condition of supervision or a violation of law.

14:25:35 15 Because of the length of the sentence and the harm to
14:25:40 16 the family, I will waive the fine in the case. But I do have to
14:25:45 17 assess a \$100 mandatory assessment under the Victims of Crime
14:25:52 18 Act.

14:25:53 19 Counsel, I've had the probation department go through
14:26:00 20 the indictment, and, of course, I will read the forfeiture if you
14:26:14 21 wish. But what I suggest is we just attach a copy of the
14:26:19 22 forfeiture to the judgment and not read it today, but that's your
14:26:28 23 choice. I can read it if you wish.

14:26:30 24 MR. LECHTENBERGER: No. Your proposition is --

14:26:36 25 THE COURT: Then I'll give this to the clerk. And I on

14:26:40 1 the forfeiture declare all of Jose Trevino-Morales' interest in
14:26:45 2 his property as forfeited to the United States.

14:26:52 3 I neglected to do one thing and that was to state that
14:26:57 4 in addition to the presentence report and the supplemental
14:27:00 5 report, I did receive, of course, the downward departure variance
14:27:04 6 request, which I reviewed and the letters I reviewed.

14:27:17 7 MR. GARDNER: Your Honor, I just want --

14:27:18 8 THE COURT: Mr. Trevino, I'm going to give you a
14:27:20 9 letter, which merely tells you what the law is, and your lawyer
14:27:27 10 will, of course, tell you what the law is. But I'm required to
14:27:34 11 tell you that you have 14 days to tell your lawyer to file a
14:27:40 12 notice of appeal if you wish to appeal any part of this case,
14:27:45 13 either the conviction, or sentence, or whatnot. You must tell
14:27:48 14 him within 14 days so he could file the notice of appeal.

14:27:51 15 Do you understand that?

14:27:52 16 DEFENDANT TREVINO-MORALES: Yes, sir. Thank you.

14:27:53 17 MR. GARDNER: Your Honor, just clarification on the
14:27:54 18 list that you provided for the record. Was that the superseding
14:27:57 19 indictment containing all of the asset and forfeiture, substitute
14:28:01 20 money judgment?

14:28:03 21 PROBATION OFFICER: Yes, sir.

14:28:05 22 MR. GARDNER: Okay. Just wanted to make sure it was
14:28:07 23 the complete thing that's included in the superseding indictment.

14:28:10 24 PROBATION OFFICER: In the e-mail.

14:28:11 25 MR. GARDNER: Thank you.

14:28:12 1 THE COURT: Well, why don't the two of you look at it.
14:28:14 2 I'm going to make that suggestion to all. Counsel for the other
14:28:49 3 defendants, I have the same list, but, of course, it has your
14:28:54 4 client's name on it. The only difference between the one that
14:28:59 5 counsel are looking at over here.

14:29:04 6 MR. WOMACK: Sir, we have a copy of it.

14:29:06 7 THE COURT: That's what I thought. You got it with the
14:29:08 8 probation officer.

14:29:10 9 DEFENDANT TREVINO-MORALES: Your Honor, I've been --

14:29:12 10 THE COURT: Wait, wait. Don't tell me anything. Tell
14:29:14 11 your lawyer, please.

14:29:15 12 MR. LECHTENBERGER: You can't talk. The Judge is
14:29:20 13 right.

14:29:20 14 DEFENDANT TREVINO-MORALES: I'm sorry.

14:29:49 15 MR. GARDNER: Your Honor, with respect to the Court's
14:29:51 16 Exhibit regarding the forfeiture, a couple of comments.

14:29:55 17 Essentially we provided Mr. Hellums the combined properties as

14:29:58 18 relates to Mr. Jose-Trevino, which we're fine with. And under

14:30:03 19 two, there's the real property located at 163 Rianna Woods in

14:30:07 20 Dale. That is Mr. Jesus and Mr. "Chevo" Huitron's property, and

14:30:14 21 the government is not seeking that forfeiture, based on Mr. Jesus

14:30:17 22 Huitron's acquittal. So we would abandon that forfeiture.

14:30:21 23 THE COURT: All right.

14:30:22 24 MR. GARDNER: Of most concern to the government, your

14:30:24 25 Honor, page 47 of the -- 47, 48 of the government's superseding

14:30:30 1 indictment, the government is asking for money judgment and
14:30:33 2 substitute assets, and that is not included within the document
14:30:37 3 the Court proposed to submit. So we would ask that the money
14:30:41 4 judgment for page 47 and the substituted assets for page 48 be
14:30:45 5 included as part of the asset forfeiture portion of this lawsuit.

14:30:51 6 THE COURT: It would be helpful if you would have asked
14:30:54 7 before today. This list is only to list the properties that Jose
14:31:24 8 Trevino's interest are part of.

14:31:28 9 MR. GARDNER: Yes, sir.

14:31:28 10 THE COURT: That's all. Now, if you have your motion
14:31:33 11 to substitute.

14:31:34 12 MR. GARDNER: To seek a money judgment for the amount
14:31:37 13 of the total. And I may better let the asset forfeiture
14:31:40 14 attorneys argue this if the Court wants to hear argument.

14:31:43 15 THE COURT: Well, I got a motion in one of these cases
14:31:46 16 but not in the others.

14:31:49 17 MS. CRUZ-ZAPATA: May I address the Court, your Honor?

14:31:50 18 THE COURT: I think you best.

14:31:53 19 MS. CRUZ-ZAPATA: Your Honor, I'm Diana Cruz-Zapata.
14:31:58 20 I'm one of the asset forfeiture AUSAs in the U.S. Attorney's
14:32:02 21 Office.

14:32:02 22 When the defense counsel waived a jury on all
14:32:05 23 properties, including in it -- and then, the money judgment is to
14:32:09 24 be determined in front of the Court in a hearing such as this.
14:32:13 25 So that is the reason why we did not file motion for money

14:32:16 1 judgment ahead of time, in order to present evidence for the
14:32:20 2 Court now to make that determination.

14:32:25 3 THE COURT: Well, you're very helpful. What is the
14:32:30 4 money judgment for substitution of the interest of the
14:32:35 5 properties?

14:32:36 6 MS. CRUZ-ZAPATA: The money judgment is a calculation,
14:32:38 7 your Honor, of all the proceeds and the property involved.

14:32:40 8 THE COURT: Correct. Somebody ought to tell me what it
14:32:42 9 is.

14:32:43 10 MS. CRUZ-ZAPATA: Okay. Well, the money judgment in
14:32:45 11 terms of what the calculations are includes the 25 million that
14:32:50 12 we assert is in the PSR, along with the -- it's above the 50
14:32:56 13 million that has been testified to today with regards to the
14:33:00 14 confidential informant named "Pitufo." And the substitute assets
14:33:04 15 applies when -- if the money judgment is granted by the Court,
14:33:08 16 then we could go after substitute assets in order to apply
14:33:11 17 towards the money judgment. But that's what the money judgment
14:33:14 18 represents, your Honor.

14:33:15 19 THE COURT: Well, but the parties have the right to
14:33:18 20 contest that, and at this point in time, they don't even know
14:33:23 21 what to contest because the Court doesn't know what you're asking
14:33:25 22 for.

14:33:26 23 MS. CRUZ-ZAPATA: I apologize to the Court --

14:33:28 24 THE COURT: You don't have to apologize to the Court.
14:33:30 25 You filed one thing in Mr. Colorado-Cessa's for specific things

1 to do with the airplanes, but you did not file anything in any of
2 the other cases that I'm aware.

3 MS. CRUZ-ZAPATA: I filed -- that's a civil case
4 against Mr. Colorado-Cessa's assets, civil asset forfeiture case.
5 So that's separate and apart, in that regard, from this case.

6 However, your Honor, we did file on the defendants that
7 have pled guilty, we have filed motions for preliminary order and
8 money judgments on those. But with regards to the defendants
9 that went to trial, we did not file anything at this point
10 because of the hearing that we're having today.

11 THE COURT: Mr. Trevino, if you wish, you can have a
12 seat.

13 DEFENDANT TREVINO-MORALES: Thank you, sir.

14 MR. LECHTENBERGER: Could I also sit down, Judge, or do
15 you want me to stand?

16 THE COURT: Yes, sir.

17 MR. LECHTENBERGER: Thank you, Judge.

18 THE COURT: About as long as it takes an oak tree to
19 grow.

20 Mr. Lechtenberger.

21 MR. LECHTENBERGER: Sir.

22 THE COURT: The government is seeking a motion for an
23 entry of a money judgment in all of the cases wherein the
24 defendants pled guilty of \$60 million. I suspect that it's like
25 many of these judgments that we have in the pornography cases for

14:36:34 1 \$100 million that's never going to be paid, but that's what they
14:36:41 2 have requested as a result of the plea agreement.

14:36:49 3 And it is -- it's a motion that in the event that the
14:36:52 4 properties aren't obtained in the interest of the defendant and
14:37:03 5 not obtained by the government, then this would be a money
14:37:07 6 judgment that would protect up to \$60 million. It's a joint and
14:37:14 7 several liability with all the defendants who have been convicted
14:37:17 8 in this case or who have pled guilty.

14:37:24 9 So surprise to me, as well as surprise to you. If you
14:37:27 10 wish, I can schedule a supplemental hearing if you need time to
14:37:32 11 take that, or you can, of course, agree to it as a joint and
14:37:38 12 several liability to the others.

14:37:43 13 MR. LECHTENBERGER: Would it be sufficient if I went
14:37:46 14 with the third option, your Honor, and objected under procedural
14:37:48 15 and substantive grounds as to any \$60 million joint and several
14:37:53 16 liability? Or would that entail having a formal hearing again,
14:37:58 17 which I would like to avoid?

14:38:01 18 I understand that if you overrule my request and go
14:38:05 19 ahead and order the 60 million joint and several, and I
14:38:09 20 understand how the forfeiture provisions have worked, however, I
14:38:12 21 just have a real issue with a \$60 million -- he does his 20
14:38:17 22 years, he gets out on supervised release, and then, the Financial
14:38:21 23 Litigation Unit out of Washington, D.C. comes after him. And
14:38:24 24 then, for the rest of his life, if he lives to be 100 years old,
14:38:28 25 will always have this over him.

14:38:30 1 THE COURT: Well, that's certainly a theoretical
14:38:34 2 possibility. I've never seen the unit do anything. But that's
14:38:41 3 the way it -- that's the alternative.

14:38:44 4 What says the government? The government want a
14:38:49 5 separate hearing to where they can justify the \$60 million as a
14:38:54 6 substitute judgment? Or is the government satisfied with just
14:38:59 7 the objection by the defendant?

14:39:00 8 MS. CRUZ-ZAPATA: We stand by the objection by the
14:39:03 9 defendant, your Honor. And just so it's clear on the record that
14:39:06 10 the money judgment was included in the notice of forfeiture of
14:39:10 11 the indictment.

14:39:10 12 THE COURT: No. I understand that.

14:39:11 13 MS. CRUZ-ZAPATA: Okay. It was in all the evidence
14:39:14 14 that we have, your Honor, so we're not going to separate it.

14:39:17 15 THE COURT: All right. Then I will enter, over the
14:39:20 16 objection of the defendant, the money judgment of 60 million,
14:39:24 17 which will be a joint and several liability with all defendants
14:39:30 18 convicted in this case.

14:39:35 19 Counsel, I assume that Mr. Trevino, if you want to ask
14:39:39 20 him, he's going to want to be as close to Dallas as possible?

14:39:44 21 MR. LECHTENBERGER: Yes, sir. In fact, you read my
14:39:45 22 mind again, your Honor. Number five in my sentencing memorandum,
14:39:48 23 I ask for BOP placement somewhere preferably in Texas.

14:39:52 24 THE COURT: Seagoville is the closest.

14:39:54 25 MR. LECHTENBERGER: That would be perfect, your Honor.

14:39:56 1 THE COURT: You understand, Mr. Trevino, I don't have
14:39:57 2 the authority to order them to put you there. My judgment is,
14:40:02 3 though, that they will put you there, and they'll put you there
14:40:05 4 as soon as, wherever you go, they make a determination you're not
14:40:08 5 a danger to yourself or anybody else, they'll get you as close to
14:40:13 6 your family. So hopefully you'll get to see Seagoville, but if
14:40:18 7 you don't get Seagoville, don't get mad. Get with your
14:40:21 8 counselor, tell them about your family, and I'm sure they'll get
14:40:25 9 you to Seagoville very quickly.

14:40:28 10 DEFENDANT TREVINO-MORALES: Thank you, sir. And I
14:40:29 11 apologize to the Court and thank you.

14:40:31 12 THE COURT: All right.

14:40:33 13 MR. LECHTENBERGER: Your Honor, one last thing.

14:40:34 14 Just for purposes of any type of appeal, I understand
14:40:38 15 the 240 months and how the Court got to that, but I would object
14:40:41 16 procedurally and substantive as to the reasonableness of the
14:40:44 17 sentence. That's all I have to say.

14:40:45 18 THE COURT: Okay. And the objection is overruled. But
14:40:47 19 you didn't read -- I didn't read your mind well enough. I'm
14:40:51 20 going to seal the presentence investigation. Nobody can come in
14:40:54 21 and read about Mr. Trevino or his family. It becomes part of the
14:40:59 22 record if there is an appeal.

14:41:04 23 MR. LECHTENBERGER: Thanks, Judge.

14:41:05 24 THE COURT: And I'm going to attach the addendum there,
14:41:09 25 and the government may, of course, use theirs for official

14:41:12 1 purposes.

14:41:16 2 All right. I remand Mr. Trevino. Thank you, counsel.

14:41:21 3 MR. LECHTENBERGER: Can I stand down, your Honor?

14:41:22 4 THE COURT: You may.

14:41:23 5 MR. LECHTENBERGER: Thank you, sir.

6 (End of proceedings.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Official Court Reporter, United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 23rd day of October, 2013.

/s/Lily I. Reznik
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